

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

SOURCE, INC.

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Case No. 3:09-CV-63-GCM

Plaintiff,

)

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v.

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KEY ELECTRONICS, INC.

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ORDER

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Defendant.

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This matter is before the court upon Plaintiff's Motion for Voluntary Dismissal.

Defendant has filed an objection to this motion.

Plaintiff Source, Inc. ("Source") and Defendant Key Electronics, Inc. ("Key") entered into an agreement where Source would earn a commission by both obtaining inputs for Key's manufactured goods and by selling the finished products. Source filed its Complaint on January 20, 2009, in North Carolina Superior Court alleging breach of contract. Key removed the case and filed its Answer on February 19, 2009. Source filed its Motion for Voluntary Dismissal pursuant to Federal Rule of Civil Procedure 41(a)(2).

Rule 41(a)(2) states that "an action may be dismissed at the plaintiff's request only by a court order, on terms that the court considers proper." Fed. R. Civ. P. 41(a)(2). A plaintiff's right to voluntary dismissal is not absolute when the defendant has showed that his rights would be prejudiced by the dismissal. See Pilot Life Ins. Co. v. Habis, 90 F.2d 842, 843 (4th Cir. 1937). The mere filing of an answer is an insufficient basis for showing prejudice. See Andes v. Versant Corp. 788 F.2d 1033, 1037 (4th Cir. 1986).

The Defendant has failed to demonstrate that it would be prejudiced by the Plaintiff's voluntary dismissal of this action. The Defendant has only filed an Answer, engaged in settlement discussions, and initiated a 26(f) conference. These activities were minimal, as they were carried out in the early stages of litigation, and they do not establish a substantial prejudice.

The Defendant argues that the Plaintiff has failed to explain its reasons for the dismissal. However, there is no requirement that the Plaintiff disclose its reasons. New York Life Ins. Co. v. Driggs, 72 F.2d 833, 834 (4th Cir. 1934) (citing In re Skinner & Eddy Corp., 265 U.S. 86, 93 (1924))

IT IS THEREFORE ORDERED that Plaintiff's Motion for Voluntary Dismissal is hereby **GRANTED**.

Signed: June 16, 2009

A handwritten signature in black ink, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen
United States District Judge

